



# Value Added Tax Act 1994

## 1994 CHAPTER 23

### PART IV

#### ADMINISTRATION, COLLECTION AND ENFORCEMENT

##### *Interest, repayment supplements etc. payable by Commissioners*

#### **78 Interest in certain cases of official error.**

- (1) Where, due to an error on the part of the Commissioners, a person has—
- (a) accounted to them for an amount by way of output tax which was not output tax due from him [<sup>F1</sup>and, as a result, they are liable under section 80(2A) to pay (or repay) an amount to him, ] or
  - (b) failed to claim credit under section 25 for an amount for which he was entitled so to claim credit and which they are in consequence liable to pay to him, or
  - (c) (otherwise than in a case falling within paragraph (a) or (b) above) paid to them by way of VAT an amount that was not VAT due and which they are in consequence liable to repay to him, or
  - (d) suffered delay in receiving payment of an amount due to him from them in connection with VAT,

then, if and to the extent that they would not be liable to do so apart from this section, they shall pay interest to him on that amount for the applicable period, but subject to the following provisions of this section.

[<sup>F2</sup>(1A) In subsection (1) above—

- (a) references to an amount which the Commissioners are liable in consequence of any matter to pay or repay to any person are references, where a claim for the payment or repayment has to be made, to only so much of that amount as is the subject of a claim that the Commissioners are required to satisfy or have satisfied; and
- (b) the amounts referred to in paragraph (d) do not include any amount payable under this section.]

*Status: Point in time view as at 21/07/2008.*

**Changes to legislation:** *There are currently no known outstanding effects for the Value Added Tax Act 1994, Cross Heading: Interest, repayment supplements etc. payable by Commissioners. (See end of Document for details)*

- (2) Nothing in subsection (1) above requires the Commissioners to pay interest—
- (a) on any amount which falls to be increased by a supplement under section 79; or
  - (b) where an amount is increased under that section, on so much of the increased amount as represents the supplement.
- (3) Interest under this section shall be payable at [<sup>F3</sup>the rate applicable under section 197 of the Finance Act 1996]. and the first such order may prescribe, for cases where interest runs from before the date on which that order is expressed to come into force, rates for periods ending before that date.
- (4) The “applicable period” in a case falling within subsection (1)(a) or (b) above is the period—
- (a) beginning with the appropriate commencement date, and
  - (b) ending with the date on which the Commissioners authorise payment of the amount on which the interest is payable.
- (5) In subsection (4) above, the “appropriate commencement date”—
- (a) in a case where an amount would have been due from the person by way of VAT in connection with the relevant return, had his input tax and output tax been as stated in that return, means the date on which the Commissioners received payment of that amount; and
  - (b) in a case where no such payment would have been due from him in connection with that return, means the date on which the Commissioners would, apart from the error, have authorised payment of the amount on which the interest is payable;
- and in this subsection “the relevant return” means the return in which the person accounted for, or (as the case may be) ought to have claimed credit for, the amount on which the interest is payable.
- (6) The “applicable period” in a case falling within subsection (1)(c) above is the period—
- (a) beginning with the date on which the payment is received by the Commissioners, and
  - (b) ending with the date on which they authorise payment of the amount on which the interest is payable.
- (7) The “applicable period” in a case falling within subsection (1)(d) above is the period—
- (a) beginning with the date on which, apart from the error, the Commissioners might reasonably have been expected to authorise payment of the amount on which the interest is payable, and
  - (b) ending with the date on which they in fact authorise payment of that amount.
- [<sup>F4</sup>(8) In determining in accordance with subsection (4), (6) or (7) above the applicable period for the purposes of subsection (1) above, there shall be left out of account any period by which the Commissioners’ authorisation of the payment of interest is delayed by the conduct of the person who claims the interest.
- (8A) The reference in subsection (8) above to a period by which the Commissioners’ authorisation of the payment of interest is delayed by the conduct of the person who claims it includes, in particular, any period which is referable to—

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- (a) any unreasonable delay in the making of the claim for interest or in the making of any claim for the payment or repayment of the amount on which interest is claimed;
  - (b) any failure by that person or a person acting on his behalf or under his influence to provide the Commissioners—
    - (i) at or before the time of the making of a claim, or
    - (ii) subsequently in response to a request for information by the Commissioners,with all the information required by them to enable the existence and amount of the claimant's entitlement to a payment or repayment, and to interest on that payment or repayment, to be determined; and
  - (c) the making, as part of or in association with either—
    - (i) the claim for interest, or
    - (ii) any claim for the payment or repayment of the amount on which interest is claimed,of a claim to anything to which the claimant was not entitled.
- (9) In determining for the purposes of subsection (8A) above whether any period of delay is referable to a failure by any person to provide information in response to a request by the Commissioners, there shall be taken to be so referable, except so far as may be prescribed, any period which—
- (a) begins with the date on which the Commissioners require that person to provide information which they reasonably consider relevant to the matter to be determined; and
  - (b) ends with the earliest date on which it would be reasonable for the Commissioners to conclude—
    - (i) that they have received a complete answer to their request for information;
    - (ii) that they have received all that they need in answer to that request; or
    - (iii) that it is unnecessary for them to be provided with any information in answer to that request.]
- (10) The Commissioners shall only be liable to pay interest under this section on a claim made in writing for that purpose.
- [<sup>F5</sup>(11) A claim under this section shall not be made more than three years after the end of the applicable period to which it relates.]
- (12) In this section—
- [<sup>F6</sup>(a) references to the authorisation by the Commissioners of the payment of any amount include references to the discharge by way of set-off (whether under section 81(3) or otherwise) of the Commissioners' liability to pay that amount; and]
  - (b) any reference to a return is a reference to a return required to be made in accordance with paragraph 2 of Schedule 11.

#### Textual Amendments

- F1** Words in s. 78(1)(a) substituted (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 4\(2\)](#)
- F2** S. 78(1A) inserted (retrospectively) by [1997 c. 16, s. 44\(1\)](#)

*Status: Point in time view as at 21/07/2008.*

**Changes to legislation:** There are currently no known outstanding effects for the Value Added Tax Act 1994, Cross Heading: Interest, repayment supplements etc. payable by Commissioners. (See end of Document for details)

- F3** Words in s. 78(3) substituted (1.4.1997 with effect as mentioned in s. 197(7) of the amending Act) by 1996 c. 8, s. 197(6)(d)(ii)(7); S.I. 1997/1015, art. 2
- F4** S. 78(8)(8A)(9) substituted for s. 78(8)(9) (19.3.1997 with effect as mentioned in s. 44(5) of the amending Act) by 1997 c. 16, s. 44(4)(5)
- F5** S. 78(11) substituted (with effect retrospectively as mentioned in s. 44(2) of the amending Act) by 1997 c. 16, s. 44(2)
- F6** S. 78(12)(a) substituted (with effect retrospectively as mentioned in s. 44(3) of the amending Act) by 1997 c. 16, s. 44(3)

**Modifications etc. (not altering text)**

- C1** S. 78 amended (with effect retrospectively as mentioned in s. 44(2)(6) of the amending Act) by 1997 c. 16, s. 44(2)(6)  
S. 78 power to amend (1.4.1997) by 1996 c. 8, s. 197(2)(c)(7); S.I. 1997/1015, art. 2

**<sup>F7</sup>[78A Assessment for interest overpayments.**

- (1) Where—
- (a) any amount has been paid to any person by way of interest under section 78, but
  - (b) that person was not entitled to that amount under that section,
- the Commissioners may, to the best of their judgement, assess the amount so paid to which that person was not entitled and notify it to him.
- (2) An assessment made under subsection (1) above shall not be made more than two years after the time when evidence of facts sufficient in the opinion of the Commissioners to justify the making of the assessment comes to the knowledge of the Commissioners.
- (3) Where an amount has been assessed and notified to any person under subsection (1) above, that amount shall be deemed (subject to the provisions of this Act as to appeals) to be an amount of VAT due from him and may be recovered accordingly.
- (4) Subsection (3) above does not have effect if or to the extent that the assessment in question has been withdrawn or reduced.
- (5) An assessment under subsection (1) above shall be a recovery assessment for the purposes of section 84(3A).
- (6) Sections 74 and 77(6) apply in relation to assessments under subsection (1) above as they apply in relation to assessments under section 73 but as if the reference in subsection (1) of section 74 to the reckonable date were a reference to the date on which the assessment is notified.
- (7) Where by virtue of subsection (6) above any person is liable to interest under section 74—
- (a) section 76 shall have effect in relation to that liability with the omission of subsections (2) to (6); and
  - (b) section 77, except subsection (6), shall not apply to an assessment of the amount due by way of interest;

and (without prejudice to the power to make assessments for interest for later periods) the interest to which any assessment made under section 76 by virtue of paragraph (a) above may relate shall be confined to interest for a period of no more than two years ending with the time when the assessment to interest is made.

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- (8) For the purposes of this section notification to a personal representative, trustee in bankruptcy, interim or permanent trustee, receiver, liquidator or person otherwise acting in a representative capacity in relation to another shall be treated as notification to the person in relation to whom he so acts.]

#### Textual Amendments

- F7** S. 78A inserted (retrospective to 4.12.1996 and with effect as mentioned in s. 45(4) of the amending Act) by 1997 c. 16, s. 45(1)(4)

#### Modifications etc. (not altering text)

- C2** S. 78A(2)-(4)(8) applied (1.4.2001) by S.I. 2001/759, reg. 4(3)  
**C3** S. 78A(2)-(8) applied (4.12.1996 as mentioned in s. 49(8)(9) of the amending Act) by 1997 c. 16, s. 49(4)(8)

## 79 Repayment supplement in respect of certain delayed payments or refunds.

- (1) In any case where—
- a person is entitled to a VAT credit, or
  - a body which is registered and to which section 33 applies is entitled to a refund under that section <sup>F8</sup>, or
  - a body which is registered and to which section 33A applies is entitled to a refund under that section,

and the conditions mentioned in subsection (2) below are satisfied, the amount which, apart from this section, would be due by way of that payment or refund shall be increased by the addition of a supplement equal to 5 per cent. of that amount or £50, whichever is the greater.

- (2) The said conditions are—
- that the requisite return or claim is received by the Commissioners not later than the last day on which it is required to be furnished or made, and
  - that a written instruction directing the making of the payment or refund is not issued by the Commissioners within [<sup>F9</sup>the relevant period], and
  - that the amount shown on that return or claim as due by way of payment or refund does not exceed the payment or refund which was in fact due by more than 5 per cent. of that payment or refund or £250, whichever is the greater.

[<sup>F10</sup>(2A) The relevant period in relation to a return or claim is the period of 30 days beginning with the later of—

- the day after the last day of the prescribed accounting period to which the return or claim relates, and
- the date of the receipt by the Commissioners of the return or claim.]

- (3) Regulations may provide that, in computing the period of 30 days referred to in [<sup>F11</sup>subsection (2A)] above, there shall be left out of account periods determined in accordance with the regulations and referable to—

- the raising and answering of any reasonable inquiry relating to the requisite return or claim,
- the correction by the Commissioners of any errors or omissions in that return or claim, and

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- (c) in the case of a payment, the following matters, namely—
- (i) any such continuing failure to submit returns as is referred to in section 25(5), and
  - (ii) compliance with any such condition as is referred to in paragraph 4(1) of Schedule 11.
- (4) In determining for the purposes of regulations under subsection (3) above whether any period is referable to the raising and answering of such an inquiry as is mentioned in that subsection, there shall be taken to be so referable any period which—
- (a) begins with the date on which the Commissioners first consider it necessary to make such an inquiry, and
  - (b) ends with the date on which the Commissioners—
    - (i) satisfy themselves that they have received a complete answer to the inquiry, or
    - (ii) determine not to make the inquiry or, if they have made it, not to pursue it further,
 but excluding so much of that period as may be prescribed; and it is immaterial whether any inquiry is in fact made or whether it is or might have been made of the person or body making the requisite return or claim or of an authorised person or of some other person.
- (5) Except for the purpose of determining the amount of the supplement—
- (a) a supplement paid to any person under subsection (1)(a) above shall be treated as an amount due to him by way of credit under section 25(3), and
  - (b) a supplement paid to any body under subsection (1)(b) above shall be treated as an amount due to it by way of refund under section 33<sup>F12</sup>, and
  - (c) a supplement paid to any body under subsection (1)(c) shall be treated as an amount due to it by way of refund under section 33A.
- (6) In this section “requisite return or claim” means—
- (a) in relation to a payment, the return for the prescribed accounting period concerned which is required to be furnished in accordance with regulations under this Act, and
  - (b) in relation to a refund, the claim for that refund which is required to be made in accordance with the Commissioners’ determination under section 33<sup>F13</sup> or (as the case may be) the Commissioners’ determination under, and the provisions of, section 33A.
- (7) If the Treasury by order so direct, any period specified in the order shall be disregarded for the purpose of calculating the period of 30 days referred to in [F11 subsection (2A)] above.

#### Textual Amendments

- F8** S. 79(1)(c) and the preceding word “or” inserted (11.5.2001 for specified purposes otherwise 1.9.2001) by 2001 c. 9, s. 98(5)(10)(11)
- F9** Words in s. 79(2)(b) substituted (27.7.1999 with effect as mentioned in s. 19(5) of the amending Act) by 1999 c. 16, s. 19(2)
- F10** S. 79(2A) inserted (27.7.1999 with effect as mentioned in s. 19(5) of the amending Act) by 1999 c. 16, s. 19(3)
- F11** Words in s. 79(3)(7) substituted (27.7.1999 with effect as mentioned in s. 19(5) of the amending Act) by 1999 c. 16, s. 19(4)

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- F12** S. 79(5)(c) and the preceding word “and” inserted (11.5.2001 for specified purposes otherwise 1.9.2001) by 2001 c. 9, s. 98(6)(10)(11)
- F13** Words in s. 79(6)(b) inserted (11.5.2001 for specified purposes otherwise 1.9.2001) by 2001 c. 9, s. 98(7)(10)(11)

## 80 [F14]Credit for, or repayment of, overstated or overpaid VAT]

[F15](1) Where a person—

- (a) has accounted to the Commissioners for VAT for a prescribed accounting period (whenever ended), and
- (b) in doing so, has brought into account as output tax an amount that was not output tax due,

the Commissioners shall be liable to credit the person with that amount.

(1A) Where the Commissioners—

- (a) have assessed a person to VAT for a prescribed accounting period (whenever ended), and
- (b) in doing so, have brought into account as output tax an amount that was not output tax due,

they shall be liable to credit the person with that amount.

(1B) Where a person has for a prescribed accounting period (whenever ended) paid to the Commissioners an amount by way of VAT that was not VAT due to them, otherwise than as a result of—

- (a) an amount that was not output tax due being brought into account as output tax, or
- (b) an amount of input tax allowable under section 26 not being brought into account,

the Commissioners shall be liable to repay to that person the amount so paid.]

(2) The Commissioners shall only be liable to [F16]credit or] repay an amount under this section on a claim being made for the purpose.

[F17](2A) Where—

- (a) as a result of a claim under this section by virtue of subsection (1) or (1A) above an amount falls to be credited to a person, and
- (b) after setting any sums against it under or by virtue of this Act, some or all of that amount remains to his credit,

the Commissioners shall be liable to pay (or repay) to him so much of that amount as so remains.]

(3) It shall be a defence, in relation to a claim [F18]under this section by virtue of subsection (1) or (1A) above, that the crediting] of an amount would unjustly enrich the claimant.

[F19](3A) Subsection (3B) below applies for the purposes of subsection (3) above where—

- (a) an amount would (apart from subsection (3) above) fall to be credited under subsection (1) or (1A) above to any person (“the taxpayer”), and
- (b) the whole or a part of the amount brought into account as mentioned in paragraph (b) of that subsection has, for practical purposes, been borne by a person other than the taxpayer.]

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- (3B) Where, in a case to which this subsection applies, loss or damage has been or may be incurred by the taxpayer as a result of mistaken assumptions made in his case about the operation of any VAT provisions, that loss or damage shall be disregarded, except to the extent of the quantified amount, in the making of any determination—
- (a) of whether or to what extent the [<sup>F20</sup>crediting] of an amount to the taxpayer would enrich him; or
  - (b) of whether or to what extent any enrichment of the taxpayer would be unjust.

(3C) In subsection (3B) above—

“the quantified amount” means the amount (if any) which is shown by the taxpayer to constitute the amount that would appropriately compensate him for loss or damage shown by him to have resulted, for any business carried on by him, from the making of the mistaken assumptions; and

“VAT provisions” means the provisions of—

- (a) any enactment, subordinate legislation or Community legislation (whether or not still in force) which relates to VAT or to any matter connected with VAT; or
- (b) any notice published by the Commissioners under or for the purposes of any such enactment or subordinate legislation.

[<sup>F21</sup>(4) The Commissioners shall not be liable on a claim under this section—

- (a) to credit an amount to a person under subsection (1) or (1A) above, or
  - (b) to repay an amount to a person under subsection (1B) above,
- if the claim is made more than 3 years after the relevant date.

(4ZA) The relevant date is—

- (a) in the case of a claim by virtue of subsection (1) above, the end of the prescribed accounting period mentioned in that subsection, unless paragraph (b) below applies;
- (b) in the case of a claim by virtue of subsection (1) above in respect of an erroneous voluntary disclosure, the end of the prescribed accounting period in which the disclosure was made;
- (c) in the case of a claim by virtue of subsection (1A) above in respect of an assessment issued on the basis of an erroneous voluntary disclosure, the end of the prescribed accounting period in which the disclosure was made;
- (d) in the case of a claim by virtue of subsection (1A) above in any other case, the end of the prescribed accounting period in which the assessment was made;
- (e) in the case of a claim by virtue of subsection (1B) above, the date on which the payment was made.

In the case of a person who has ceased to be registered under this Act, any reference in paragraphs (b) to (d) above to a prescribed accounting period includes a reference to a period that would have been a prescribed accounting period had the person continued to be registered under this Act.

(4ZB) For the purposes of this section the cases where there is an erroneous voluntary disclosure are those cases where—

- (a) a person discloses to the Commissioners that he has not brought into account for a prescribed accounting period (whenever ended) an amount of output tax due for the period;



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- (b) the disclosure is made in a later prescribed accounting period (whenever ended); and
- (c) some or all of the amount is not output tax due.]

[<sup>F22</sup>(4A) Where—

- (a) an amount has been credited under subsection (1) or (1A) above to any person at any time on or after 26th May 2005, and
- (b) the amount so credited exceeded the amount which the Commissioners were liable at that time to credit to that person,

the Commissioners may, to the best of their judgement, assess the excess credited to that person and notify it to him.]

[<sup>F23</sup>(4AA) An assessment under subsection (4A) shall not be made more than 2 years after the later of—

- (a) the end of the prescribed accounting period in which the amount was credited to the person, and
- (b) the time when evidence of facts sufficient in the opinion of the Commissioners to justify the making of the assessment comes to the knowledge of the Commissioners.]

(4C) Subsections [<sup>F24</sup>(3)] to (8) of section 78A apply in the case of an assessment under subsection (4A) above as they apply in the case of an assessment under section 78A(1).

(6) A claim under this section shall be made in such form and manner and shall be supported by such documentary evidence as the Commissioners prescribe by regulations; and regulations under this subsection may make different provision for different cases.

[<sup>F25</sup>(7) Except as provided by this section, the Commissioners shall not be liable to credit or repay any amount accounted for or paid to them by way of VAT that was not VAT due to them.]

#### Textual Amendments

- F14** S. 80 side-note substituted (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 3\(11\)](#)
- F15** S. 80(1)-(1B) substituted for s. 80(1) (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 3\(2\)](#)
- F16** Words in s. 80(2) inserted (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 3\(3\)](#)
- F17** S. 80(2A) inserted (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 3\(4\)](#)
- F18** Words in s. 80(3) substituted (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 3\(5\)](#)
- F19** S. 80(3A) substituted (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 3\(6\)](#)
- F20** Word in s. 80(3B)(a) substituted (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 3\(7\)](#)
- F21** S. 80(4)(4ZA)(4ZB) substituted for s. 80(4) (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 3\(8\)](#)
- F22** S. 80(4A) substituted for s. 80(4A)(4B) (with effect in accordance with s. 4(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 3\(9\)](#)
- F23** S. 80(4AA) inserted (retrospective to 19.3.2008) by [Finance Act 2008 \(c. 9\), s. 120\(3\)\(5\)](#)

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- F24** Word in s. 80(4C) substituted (retrospective to 19.3.2008) by Finance Act 2008 (c. 9), s. 120(4)(5)  
**F25** S. 80(7) substituted (with effect in accordance with s. 4(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 3(10)

**Modifications etc. (not altering text)**

- C4** S. 80(4) modified (retrospective to 19.3.2008) by Finance Act 2008 (c. 9), s. 121(1)(4)

**[<sup>F26</sup>80A Arrangements for reimbursing customers.**

- (1) The Commissioners may by regulations make provision for reimbursement arrangements made by any person to be disregarded for the purposes of section 80(3) except where the arrangements—
  - (a) contain such provision as may be required by the regulations; and
  - (b) are supported by such undertakings to comply with the provisions of the arrangements as may be required by the regulations to be given to the Commissioners.
- (2) In this section “ reimbursement arrangements ” means any arrangements for the purposes of a claim under section 80 which—
  - (a) are made by any person for the purpose of securing that he is not unjustly enriched by the [<sup>F27</sup>crediting] of any amount in pursuance of the claim; and
  - (b) provide for the reimbursement of persons who have for practical purposes borne the whole or any part of [<sup>F28</sup>the amount brought into account as mentioned in paragraph (b) of subsection (1) or (1A) of that section] .
- (3) Without prejudice to the generality of subsection (1) above, the provision that may be required by regulations under this section to be contained in reimbursement arrangements includes—
  - (a) provision requiring a reimbursement for which the arrangements provide to be made within such period after the [<sup>F29</sup>crediting of the amount] to which it relates as may be specified in the regulations;
  - [<sup>F30</sup>(b) provision for cases where an amount is credited but an equal amount is not reimbursed in accordance with the arrangements;]
  - (c) provision requiring interest paid by the Commissioners on any amount [<sup>F31</sup>paid (or repaid)] by them to be treated in the same way as that amount for the purposes of any requirement under the arrangements to make reimbursement or to repay the Commissioners;
  - (d) provision requiring such records relating to the carrying out of the arrangements as may be described in the regulations to be kept and produced to the Commissioners, or to an officer of theirs.
- (4) Regulations under this section may impose obligations on such persons as may be specified in the regulations—
  - (a) [<sup>F32</sup>to make the repayments, or give the notifications, to the Commissioners that they are required to make or give] in pursuance of any provisions contained in any reimbursement arrangements by virtue of subsection (3)(b) or (c) above;
  - (b) to comply with any requirements contained in any such arrangements by virtue of subsection (3)(d) above.
- (5) Regulations under this section may make provision for the form and manner in which, and the times at which, undertakings are to be given to the Commissioners in

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accordance with the regulations; and any such provision may allow for those matters to be determined by the Commissioners in accordance with the regulations.

- (6) Regulations under this section may—
- (a) contain any such incidental, supplementary, consequential or transitional provision as appears to the Commissioners to be necessary or expedient; and
  - (b) make different provision for different circumstances.
- (7) Regulations under this section may have effect (irrespective of when the claim for [<sup>F33</sup>credit] was made) for the purposes of [<sup>F34</sup>the crediting of any amount] by the Commissioners after the time when the regulations are made; and, accordingly, such regulations may apply to arrangements made before that time.]

#### Textual Amendments

- F26** Ss. 80A, 80B inserted (19.3.1997) by 1997 c. 16, s. 46(2)
- F27** Word in s. 80A(2)(a) substituted (with effect in accordance with s. 4(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 4(3)(a)
- F28** Words in s. 80A(2)(b) substituted (with effect in accordance with s. 4(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 4(3)(b)
- F29** Words in s. 80A(3)(a) substituted (with effect in accordance with s. 4(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 4(3)(c)
- F30** S. 80A(3)(b) substituted (with effect in accordance with s. 4(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 4(3)(d)
- F31** Words in s. 80A(3)(c) substituted (with effect in accordance with s. 4(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 4(3)(e)
- F32** Words in s. 80A(4)(a) substituted (with effect in accordance with s. 4(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 4(3)(f)
- F33** Word in s. 80A(7) substituted (with effect in accordance with s. 4(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 4(3)(g)(i)
- F34** Words in s. 80A(7) substituted (with effect in accordance with s. 4(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 4(3)(g)(ii)

#### [<sup>F35</sup>80B Assessments of amounts due under section 80A arrangements.

- (1) Where any person is liable to pay any amount to the Commissioners in pursuance of an obligation imposed by virtue of section 80A(4)(a), the Commissioners may, to the best of their judgement, assess the amount due from that person and notify it to him.

[ Where—

- <sup>F36</sup>(1A) (a) an amount (“the gross credit”) has been credited to any person under subsection (1) or (1A) of section 80,
- (b) any sums were set against that amount, in accordance with subsection (2A) of that section, and
  - (c) the amount reimbursed in accordance with the reimbursement arrangements was less than the gross credit,
- subsection (1B) below applies.

(1B) In any such case—

- (a) the person shall cease to be entitled to so much of the gross credit as exceeds the amount so reimbursed, and

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- (b) the Commissioners may, to the best of their judgement, assess the amount due from that person and notify it to him,  
but an amount shall not be assessed under this subsection to the extent that the person is liable to pay it to the Commissioners as mentioned in subsection (1) above.
- (1C) In determining the amount that a person is liable to pay as mentioned in subsection (1) above, any amount reimbursed in accordance with the reimbursement arrangements shall be regarded as first reducing so far as possible the amount that he would have been liable so to pay, but for the reimbursement of that amount.
- (1D) For the purposes of this section, nil is an amount.
- (1E) Any reference in any other provision of this Act to an assessment under subsection (1) above includes, if the context so admits, a reference to an assessment under subsection (1B) above.]
- (2) Subsections (2) to (8) of section 78A apply in the case of an assessment under subsection (1) above as they apply in the case of an assessment under section 78A(1).]

#### Textual Amendments

**F35** Ss. 80A, 80B inserted (19.3.1997) by 1997 c. 16, s. 46(2)

**F36** Ss. 80B(1A)-(1E) inserted (with effect in accordance with s. 4(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 4(4)

### 81 Interest given by way of credit and set-off of credits.

- (1) Any interest payable by the Commissioners (whether under an enactment or instrument or otherwise) to a person on a sum due to him under or by virtue of any provision of this Act shall be treated as an amount due by way of credit under section 25(3).
- (2) Subsection (1) above shall be disregarded for the purpose of determining a person's entitlement to interest or the amount of interest to which he is entitled.
- (3) Subject to subsection (1) above, in any case where—
- an amount is due from the Commissioners to any person under any provision of this Act, and
  - that person is liable to pay a sum by way of VAT, penalty, interest or surcharge, the amount referred to in paragraph (a) above shall be set against the sum referred to in paragraph (b) above and, accordingly, to the extent of the set-off, the obligations of the Commissioners and the person concerned shall be discharged.

[<sup>F37</sup>(3A) Where—

- the Commissioners are liable to pay or repay any amount to any person under this Act,
- that amount falls to be paid or repaid in consequence of a mistake previously made about whether or to what extent amounts were payable under this Act to or by that person, and
- by reason of that mistake a liability of that person to pay a sum by way of VAT, penalty, interest or surcharge was not assessed, was not enforced or was not satisfied,

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any limitation on the time within which the Commissioners are entitled to take steps for recovering that sum shall be disregarded in determining whether that sum is required by subsection (3) above to be set against the amount mentioned in paragraph (a) above.]

[<sup>F38</sup>(4A) Subsection (3) above shall not require any such amount as is mentioned in paragraph (a) of that subsection (“the credit”) to be set against any such sum as is mentioned in paragraph (b) of that subsection (“the debit”) in any case where—

- (a) an insolvency procedure has been applied to the person entitled to the credit;
- (b) the credit became due after that procedure was so applied; and
- (c) the liability to pay the debit either arose before that procedure was so applied or (having arisen afterwards) relates to, or to matters occurring in the course of, the carrying on of any business at times before the procedure was so applied.

(4B) Subject to subsection (4C) below, the following are the times when an insolvency procedure is to be taken, for the purposes of this section, to be applied to any person, that is to say—

- [<sup>F39</sup>(a) when a bankruptcy order or winding-up order or award of sequestration is made or an administrator is appointed in relation to that person;]
- (b) when that person is put into administrative receivership;
- (c) when that person, being a corporation, passes a resolution for voluntary winding up;
- (d) when any voluntary arrangement approved in accordance with Part I or VIII of the Insolvency Act 1986, or Part II or Chapter II of Part VIII of the <sup>M1</sup> Insolvency (Northern Ireland) Order 1989, comes into force in relation to that person;
- (e) when a deed of arrangement registered in accordance with the <sup>M2</sup> Deeds of Arrangement Act 1914 or Chapter I of Part VIII of that Order of 1989 takes effect in relation to that person;
- (f) when that person’s estate becomes vested in any other person as that person’s trustee under a trust deed.

[<sup>F40</sup>(4C) In this section, references to the application of an insolvency procedure to a person do not include—

- (a) the application of an insolvency procedure to a person at a time when another insolvency procedure applies to the person, or
- (b) the application of an insolvency procedure to a person immediately upon another insolvency procedure ceasing to have effect.]

(4D) For the purposes of this section a person shall be regarded as being in administrative receivership throughout any continuous period for which (disregarding any temporary vacancy in the office of receiver) there is an administrative receiver of that person, and the reference in subsection (4B) above to a person being put into administrative receivership shall be construed accordingly.]

(5) In [<sup>F41</sup>this section]—

- <sup>F42</sup>(a) .....
- (b) “administrative receiver” means an administrative receiver within the meaning of section 251 of [<sup>F43</sup>the Insolvency Act 1986] or Article 5(1) of [<sup>F44</sup>the Insolvency (Northern Ireland) Order 1989];

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- [<sup>F45</sup>(ba) “administrator” means a person appointed to manage the affairs, business and property of another person under Schedule B1 to that Act or to that Order;] and
- (c) “trust deed” has the same meaning as in the <sup>M3</sup>Bankruptcy (Scotland) Act 1985.

#### Textual Amendments

- F37** S. 81(3A) inserted (retrospective to 18.7.1996 with effect as mentioned in s. 48(2) of the amending Act) by 1997 c. 16, s. 48(1)(2)
- F38** S. 81(4A)-(4D) substituted for s. 81(4) (1.5.1995 with effect as mentioned in s. 27(4) of the amending Act) by 1995 c. 4, s. 27(2)
- F39** S. 81(4B)(a) substituted (15.9.2003) by Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 1(1), Sch. para. 26(a) (with art. 6)
- F40** S. 81(4C) substituted (21.7.2008) by Finance Act 2008 (c. 9), s. 132(2)
- F41** Words in s. 81(5) substituted (1.5.1995 with effect as mentioned in s. 27(4) of the amending Act) by 1995 c. 4, s. 27(3)
- F42** S. 81(5)(a) omitted (21.7.2008) by virtue of Finance Act 2008 (c. 9), s. 132(3)(a)
- F43** Words in s. 81(5)(b) substituted (21.7.2008) by Finance Act 2008 (c. 9), s. 132(3)(b)(i)
- F44** Words in s. 81(5)(b) substituted (21.7.2008) by Finance Act 2008 (c. 9), s. 132(3)(b)(ii)
- F45** S. 81(5)(ba) inserted (21.7.2008) by Finance Act 2008 (c. 9), s. 132(3)(c)

#### Marginal Citations

- M1** 1986 c. 45.
- M2** 1914 c. 47.
- M3** 1985 c. 66.

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